

Michael D. Kinkley
Michael D. Kinkley, P.S.
4407 N. Division, Suite 914
Spokane, WA 99207
(509) 484-5611
mkinkley@qwestoffice.net

Kirk D. Miller
Kirk D. Miller, P.S.
211 E Sprague Avenue
Spokane, WA 99202
(509)413-1494 Telephone
kmiller@millerlawspokane.com

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DONNA GENSCHORCK,

Plaintiff,

vs.

SUTTELL & HAMMER, P.S.; NICHOLAS
FILER and JANE DOE FILER, husband and
wife; and AMERICAN EXPRESS
CENTURION BANK,

Defendants.

)
) Case No.: CV-12-615-TOR

)
) DECLARATION OF MICHAEL D.
) KINKLEY RE:

Michael D. Kinkley declares the following under penalty of perjury under the laws of
Washington:

1. I am one of the attorneys representing the Plaintiff in this matter.
2. I did not represent Ms. Genshorck in 2010. Kirk Miller handled that matter without me.
3. I received a call from kirk Miller around April 11, 2011, about a wrongful garnishment of
Mrs. Genschork's wages; being done without a judgment and without even a pending
lawsuit. I checked online the court docket which confirmed what he was saying. But I

1 found garnishing without a pending case so incredible, that I insisted on reviewing the
2 actual court paper file before I would proceed.

- 3 4. On or about April 12, 2012, I was informed that Suttell had now also done a bank
4 account garnishment of Mrs. Genschork, taking all of her money from all three of her
5 bank accounts. I was told she was in a panic, very upset. The matter then took on some
6 urgency.
- 7 5. We obtained the paper court file. We confirmed the lawsuit had been dismissed and that
8 there was not a judgment. We confirmed that a Writ of Garnishment had been issued. We
9 confirmed that Mrs. Genschorks money had been taken from her. We determined that the
10 clerk had been required to issue the Writ since there was a declaration by s representative
11 of the judgment creditor. RCW 6.27.080. Even though Mr. Filer's declaration was false it
12 appeared regular on its face.
- 13 6. Scott Kinley and I began to prepare the vacate/quash pleadings. Scott called Judge
14 Eitzen's to see if we could get an emergency hearing to quash since they had taken all of
15 Mrs. Genshork's money. He was told that Judge Eitzen never does emergency hearing
16 and the hearing would have to be set on regular notice.
- 17 7. On Monday, April 16, 2012, Mrs. Genchorck was first able to come to my office. I met
18 her then for the first time. The questions in the deposition which tend to suggest I
19 represented her before were compound questions which included Mr. Miller who did
20 represent her. She signed a retainer agreement. She was very very visibly upset. She was
21 very scared that all of her money was taken and she ha no funds. She described that it
22 was worse because of her husband's inability to help her due to his serious illness. She
23 described how she was a loan officer with an important position with this same bank an
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1 so her bosses and co-workers would see this and think she didn't pay her bills. She
2 described having to borrow money from elderly relatives.

3 8. We discussed American Express Centurion Bank. I was aware that they had been in
4 trouble for inflating consumer accounts¹. She discussed with me that she had had a
5 similar problem with them., that she did didn't owe what they claimed bout that they
6 would not discuss it with her or work it out. She and kirk described their successful
7 defense of American Express Centurion Bank in 2010.

8 9. Sottt KinKley and I, then stay a the office until about 10 p.m. (April 16, 2012) working
9 on Genschork' case. We sorted it out and prepared a fully fact checked, comprehensive
10 memo. We prepared a motion to Quash the Writ. It is my believe as an attorney with 33
11 experience including significant experience avoiding collections that since the court
12 issues the Writ it requires a court order to quash the Writ. I also have seen the "release"
13 used. It is often wholly ineffective. I have seen collectors (including Suttell) collect on a
14 writ even though they previously agreed to "release" held funds.

15 10. I knew we were serendipitously scheduled to have a hearing on another case in front of
16 the judge (Eitzen) that had been assigned to the Genschork case.

17 11. On April 17, 2012, we filed he pleadings to quash the garnishment and release the funds
18 (especially those taken form the bank accounts).

19 12. I me with judge Eitzen aft our scheduled hearing and told her I knew she did not do
20 emergency hearings but that the court ha wrongfully issued garnishment based on a false
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22
23 ¹ Since then in Septembe 2012, the FDIC fined them 1.1 Million Dollars and the CFPB fined them 39.5 million
24 Dollars for inflating consumer accounts and abusive collection practices. My recollection was of them being shut
25 down bu the OCC when they operated in a different form.

1 affidavit of an attorney and she might want to do this one time. She looked skeptical, but
2 took all our pleadings to read.

3 13. When she emerged from Chambers, Judge Eitzen said she would do an emergency
4 hearing, that I was to call and make sure Mr. Filer was available.

5 14. I called Mr. Filer. I was only able to get through the collection agency switchboard by
6 telling them I was calling from the Judge's chambers to confirm his availability for a
7 hearing.

8 15. When Mr. Filer came on the phone I told him about the hearing set for telephone for the
9 afternoon. Then I told him why the Writ had to be quashed- that there was no judgment, in
10 fact no case. Mr. Filer attempted to argue with me saying there was a judgment. I told him
11 we'd let the judge decide and would not segue the merits.

12 16. About 20 minutes later, Mr. Filer offered to "release the funds". I explained to him that
13 was not sufficient that we need the wrongfully issued writ **quashed**. I sent him a copy of
14 the proposed Order Quashing. I asked if he would sign off on the proposed order
15 quashing. He refused. My impression was the only reason that he offered to even "
16 release" the funds was to attempt to avoid the hearing scheduled for that day. In fact he
17 told the court administrative assistant that the hearing should be cancelled. Fortunately I
18 was still in the court room and explained to her that we intended to go forward with the
19 hearing.
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21 17. At the hearing later in the afternoon that day, defendant's argued against an Order
22 quashing the Writ. The judge entered the order over the defendant's objection.

23 18. Suttell and Mr. Filer are aware that following the Washington controversy procedure
24 under 6.27.230 will result in attorney fees being awarded against them. That is why they
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1 will never agree to quash a writ. Even when they have been caught filing a false affidavit,
2 wrongfully taking money from someone's bank account , they still seek to gain an
3 advantage they're not entitled to by "releasing" the funds they have caused to be
4 wrongfully withheld but refusing to fix the problem by quashing the Writ wrongfully
5 issued based on Mr. Filer's false affidavit.

6 19. The defendants have seriously misrepresented the record and proceedings in this matter
7 in state court.

8 20. I do not believe that anyone could have obtained an Order Quashing the Garnishment Writ
9 any faster or more expeditiously than Scott and I did. Our urgency had nothing to do with
10 the wage garnishment since most folks can handle temporary ding to their paycheck.

11 21. But once Suttell took ALL of Mrs., Genschorck's money from all three of Mrs.
12 Genschorck 's bank accounts, immediate court action was required. We basically were
13 able to obtain a court order in one day of signing up Mrs. Genschork. That in no way
14 alleviates Mrs. Genschorck's emotional upset at receiving the garnishment (and not
15 knowing we could fix it), or her fears that Suttell and American Express Centurion Bank
16 can reach out and do this again at any time.

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18 Signed under penalty of perjury of the laws of the state of Washington on November 25, 2013 in
19 Spokane, Washington.

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21 *Michael D. Kinkley P.S.*

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Michael D. Kinkley
WSBA # 11624
Attorney for Plaintiff
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